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STATE REPRESENTATIVE
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**TESTIMONY OF STATE REPRESENTATIVE
BARBARA TOLES**

In favor of Senate Bill 176 – Police Pay After Termination

Senate Committee on Labor, Elections, and Urban Affairs
November 28, 2007

Good morning Chairman Coggs and members of the committee. I would like to thank you for holding this public hearing on Senate Bill 176 and for allowing me to speak in favor.

In 1980, Wisconsin passed legislation known as the "Law Enforcement Officers' Bill of Rights". This measure included a number of protections for state officers, such as the right to have a union representative or lawyer present during interrogations into alleged misconduct, and the right to engage in political activity off the job. Those provisions apply to all police officers in the state.

However, the law also has a provision that grants payment of a 1st class city police officer's salary after discharge, pending the outcome of an appeal. Milwaukee is the only 1st class city in Wisconsin, hence making Milwaukee police officers the only officers in the state eligible for this benefit. Milwaukee fire fighters and other public safety personnel are excluded. SB 176 would end this practice, and provide the taxpayers in Milwaukee needed relief. Currently, the tax dollars of hard working Milwaukee residents are being paid to officers after they have been fired for just cause. Milwaukee Mayor Tom Barrett supports this legislation.

The current system is unfair to the men and women who work hard every day to protect and serve our city. It also places an undue burden on Milwaukee taxpayers. According to the Fire and Police Commission, there have been 108 terminations since 1990. All but four officers appealed. The City of Milwaukee paid over \$4.4 million in wages and benefits to those fired officers. Eight cases are still pending.

Perhaps the most well-known case involving fired officers concerns the severe beating of Frank Jude, Jr. in 2004. Three officers who were convicted in that case will be sentenced in federal court tomorrow. According to city records, it is estimated that those three officers alone cost the city just under half a million dollars in pay and benefits while they appealed their firings.

In 2005, officer Jon Bartlett, who was fired in the Jude beating case, was arrested for allegedly calling in a bomb threat to the 7th District Police Station where he worked. In February, 2006, within a one-week span, three Milwaukee officers were criminally charged with committing felonies. One officer was charged with taking bribes, another was charged with drug trafficking, and the third was charged with several sex crimes. That officer, Steven Lelinski, was charged with four felonies, including second degree sexual assault and attempted second degree sexual assault, and misdemeanor lewd and lascivious behavior. After the charges, Lelinski was immediately removed from the state Law Enforcement Standards Board by the governor, and was removed from the Milwaukee Police Association Executive Board. However, the City of Milwaukee could not remove him from the payroll because of state law.

Other examples of officer misconduct that led to termination include:

- Five police officers and a sergeant went sledding while on duty. One officer was seriously injured. The other officers, not wanting their on-duty activity to be discovered, moved the injured officer to the steps of a school and called in a false report of "officer down" and fabricated a story that he had been injured chasing a suspect. The injured officer also defrauded the City by filing a claim and receiving worker's compensation for his alleged "duty-related" injuries. Four officers involved were dismissed and appealed to the Fire and Police Commission. The sergeant resigned before charges were issued by the Department, and one officer was suspended but did not appeal. The cost to the City in wages while the dismissal appeals were pending was \$85,239.36.
- A police sergeant, while on patrol, came across a female performing a sex act on a male in a parked car. The sergeant later took the female in his squad car, parked in a secluded area, and engaged in sexual acts with her for about half an hour, ignoring a radio call for service. The sergeant appealed his dismissal to the Commission, which upheld the dismissal. The cost to the City in wages while the appeal was pending was approximately \$7,157.60.
- An off-duty detective was drinking while driving intoxicated, crossed the center island, and swerved into oncoming traffic, colliding with a vehicle and sending its three occupants to the hospital. He was charged criminally for the crash and was dismissed from the Department. He resigned from the Department four months after appealing his dismissal. The cost to the City in wages while the appeal was pending was \$13,973.43.
- An off-duty officer intentionally smoked marijuana and tested positive during a random drug test. His dismissal was upheld by the Commission. The cost to the City in wages while the appeal was pending was \$28,489.12.
- A detective removed money from the scene of an investigation and kept it for his own personal use. He then went to a restaurant and consumed an alcoholic

beverage while on duty. In addition to being dismissed, he was charged criminally. The cost to the City was \$67,788.87.

- Several citizens observed a police officer pull a prisoner out of a squad car and beat him while the officer's partner was inside a fast food restaurant. The officer was dismissed and charged criminally. The cost to the City was \$36,346.79.

The Milwaukee Police Association, the union that represents police officers, wants to limit this legislation to those officers who have been fired for committing felonies. However, misdemeanors are not minor violations of the rules – they are criminal offenses. Milwaukee police officers have been fired for committing misdemeanors such as witness intimidation and exposing their genitals to children, and continued to be paid while they appealed. The MPA wants officers who are fired for committing misdemeanors and rule violations to continue being paid. They will argue that an officer who is fired for a rule violation is different from an officer who commits a felony. The problem with this argument is, in the real world, employees who violate standard workplace rules such as falsifying reports, accumulating excessive hours of unexcused or unapproved absences, or lying to supervisors can expect to be terminated. After they are fired, their pay stops!

The practice of paying fired police officers while they appeal provides an incentive for officers to file frivolous appeals and drag out the process as long as possible. Since 1990, almost half the fired officers who initially appealed their terminations either resigned or retired before their cases came to trial. Even the President of the Milwaukee Police Association acknowledged that current law creates an opportunity for the system to be manipulated.

In contrast, Milwaukee fire fighters, who are not paid during the appeals process, try to settle their cases as quickly as possible. The average fire fighter case in Milwaukee is resolved in half the time it takes for police appeals. Between 2003 and 2006, the longest fire fighter case took four months, or about 120 days. Police officer appeals during that same timeframe averaged 202 days.

SB 176 addresses that problem by setting a more realistic time frame for trials to be scheduled as part of the appeals process, giving both sides adequate time to prepare, and cutting down on the number of adjournments. Under current law, adjournments are granted automatically, giving officers an incentive to ask for one simply to delay the onset of the trial. SB 176 requires that either party must give a reason when requesting an adjournment. This is the same standard used in all other courts and jurisdictions in Wisconsin.

I am asking for your help today on behalf of Milwaukee taxpayers. I urge you to support Senate Bill 176, and I thank you for your time this morning.

Milwaukee POLICE Association

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November 28, 2007

Dear State Senator,

I am here today regarding the proposed legislation by Senator Coggs that affects the pay for fired Milwaukee Police Officers, SB 176. Senator Coggs' bill would change the current Section 62.50, Wis. Stats, which covers Milwaukee Police Officers. This proposed legislation, while well intentioned, harms all hard working police officers and their families, in addition to those that it intends to target.

Over the past year we have had four soon to be five officers that the Chief of Police has fired that were reinstated by the Fire & Police Commission. These officers would have been without pay or a means to provide for their families while awaiting their hearing if this Senate Bill would have been in place. Clearly these cases are the reason why we have the current law in place.

In March of 1985 a case that deals with this very issue was decided by the U.S. Supreme Court. In that case, Justice Marshall wrote a dissenting opinion that echoes true today. I ask that you read his opinion as part of your deliberation on SB 176.

The Milwaukee Police Association has been meeting with the City of Milwaukee since August/September of 2006 regarding the continuation of pay for fired Milwaukee Police Officers. We have also been meeting with the Mayor and several state legislators including Senator Coggs and Representative Toles on this same issue.

During this entire process, we have proposed a number of changes to the current statute which not only meet the needs of the City, but also protect the hard working City of Milwaukee Police Officers.

If enacted, our proposed changes would have saved the City of Milwaukee hundreds of thousands of dollars. The MPA has proposed that:

1. **An Officer's pay would stop when he/she is charged with a felony and also suspended/discharged by the Chief as a result of the same act(s) which constituted the felonious criminal charge.**

This would include a provision where any such officer would be made whole for back pay and benefits only if they prevail and are re-instated to the MPD.

2. **There should only be an adjournment (of the Fire & Police Commission hearing) "for cause".**

No "mandatory adjournment" is necessary.

3. **Fire & Police Commission trials should be held between 60 and 120 days after the complaint is filed.**

This benefits the community by shortening the time for appeals to run their course, and makes it consistent with other forums (i.e., Circuit Court, etc.)

4. **The number of FPC Commissioners be expanded from 5 to 7 (with a quorum remaining at 3 for disciplinary purposes).**

This decreases each Commissioner's work load, which will in turn shorten the time for the appeal to run its course. It will allow the FPC to focus more on citizen complaints and "big picture" matters such as hiring practices/standards, etc.

5. **Our current arbitration process for discipline should be expanded.**

This would allow arbitration for all discipline other than those where the officer is also charged with a crime, bound over for trial and is discharged for the same acts which constituted the criminal charge.

This would enable the Commission to maintain control over the outcome of discharge cases that are truly "high profile," and preserve "citizen oversight" as to the type of discharge cases that most concern the public.

Historically, arbitration is faster than the normal FPC process. It would be concluded within 90 days, with the costs being shared equally between the City and the MPA (as per the collective bargaining agreement.)

Arbitration also enhances the FPCs' ability to focus on the "big picture" issues, such as hiring practices, rules, and testing.

6. **The Chief of Police would provide all exculpatory evidence, as well as all evidence relied upon in the determination of guilt and discipline, at the time the Officer is served with disciplinary charges.**

This would be necessary to speed up the entire process.

These are significant changes to the current legislation.

Unfortunately there are some who believe that all pay should stop upon termination, regardless of the basis for termination. That belief would discriminate against Milwaukee Police Officers simply because of the community in which he/she works – as the pay for every other Wisconsin Law Enforcement Officer, (including Milwaukee County Sheriff Deputies and suburban officers), continues until his/her discharge is heard before an Independent Board of Review. See Section 62.13 & 59.26(9), STATS. Such a discriminatory belief is simply unacceptable. Even Governor Doyle was quoted last year saying that all police officers in the State of Wisconsin should be treated equally.

In Mayor Barrett's March 29th statement, he said "every month I watch thousands and thousands of dollars leave city coffers to pay people who have been fired from their jobs and charged with crimes." In reality, however, it's the City that opts to pay officers even after they have been convicted of a felony. It is (and has been) the MPA's position that once an officer is convicted of a felony, he/she can no longer hold the position of a police officer. The City, on the other, hand continues to pay the officer until he/she is sentenced. This was also the case after three Milwaukee Common Council Members were convicted in Federal Court. The City of Milwaukee currently has a fourth Alderman who continues to get paid his salary, phone and auto allowance while in jail awaiting trial.

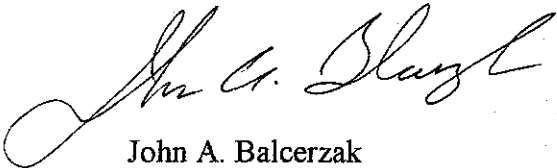
Contrary to Mayor Barrett's March 29th press release, Barrett stated in an April 3, 2007 interview that he remained hopeful and still optimistic that the City and the MPA can present a united front to the Wisconsin Legislature on a compromise bill.

The MPA agrees, and has offered the above as just such a compromise.

I'd ask that you keep in mind that an Officers' actions, whether reviewed in the courts or in the public eye, are judged on a "reasonableness" standard. "Reasonable" is defined as "rationally fitting, proper, or sensible." The MPA strongly believes that, after reading and understanding our proposal, you will deem it to be "Reasonable" as well.

Sincerely,

MILWAUKEE POLICE ASSOCIATION

A handwritten signature in cursive script, appearing to read "John A. Balcerzak".

John A. Balcerzak
President
Local #21, IUPA, AFL-CIO

JAB/cmj